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File No. O Wakf/42

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Legal **DEPARTMENT**
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Subject:—

S.R.C. 4/6

Opinions under the Mussalman Wakf Act, 1923

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Office of the R.L.A.

In his Opinion No. 6844, dated 8th September 1938, the R.L.A. has ~~has~~ opined:-

"Section 6-M of the Mussalman Wakf Act, 1923, as amended by ~~Bombay~~ Bombay Act XVIII of 1935 provides that it is competent to the Court to refer at any time to the Wakf Committee for advice, opinion inquiry or recommendation any matter relating to regulation, superintendence, administration and control of wakfs. Under section 6-M(3) the Wakf Committee has got the power to enforce the production of documents and the attendance of witnesses. The Wakf Committee would be the proper authority to collect materials relating to Wakfs and place them before the Court."

The language of section 6-M is very wide and it is sufficiently comprehensive to ~~ele~~ include references involving questions as to whether an alleged wakf is a wakf under the Act and whether any particular property is the property of such wakf. If the evidence collected by the Wakf Committee shows that the propery is wakf property, the Court will have to hear the party interested in the property) see the second proviso to section 6-M (2) and may hold the enquiry if necessary under section 6-C before passing an order as to whether or not the property is a wakf property. Consequently the Court may remit the matter in the present case for enquiry to the Wakf Committee under section 6-M. The view taken by the Secretary, Revenue Department, in his note at page 121 is correct.

Sd/-P.N.M.
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Remembrancer of Legal Affairs.

U.R. to R.D., No 1457, dated the 18th February 1942.

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Office of the R.L.A.

On a reference mad by the District Judge of Ahmedabad the High Court issued the following Circular No. 2642, dated the 24th July 1941:

"On considering the replies received to the High Court Circular No. 1258, dated the 12th March 1941 the Honourable the Chief Justice and Juages are of opinion that it is the Wakf Administration Fund and-n not the Mutawalli who should be held responsible for paying audit charges. The Mitawalli should therefore submit his claim to the Court for audit charges, substantiated by vouchers. The court should if it admits the claim, order payments of such charages out of the Wakf Administaration Fund."

The Registrar of the High Court has issued another Circular dated the 31st January 1942 as follows/-

"In amplification of the Circular No. 1258, dated the 12th March 1941 I am directed by the Hon. The Chief Justice and judges to observe as follow: A Mutawalli may according to his choice pay the cost of audit charges not of the income of the Wakf or from the wakf administra-ti n fund. Such choice once made will be binding so far as the par-ticular wakf is concerned. In cases where Mutawallis pay these charges fr m the Wakf Administration Fund their Lordships are satisfied that it is necessary to increase the rates of contribution to the Fund prescri-bed in rule 18 and Government are being moved to amend the rule".

The Chief Judge of the Small Causes Court, Bombay, is of the opinion that though the words used in section 7 of the Mussalman Wakf Act, 1923 are "may pay" there is little doubt that the legisla-ture intended that the cost of auditing annual accepe accounts of wakf for the purpose of fil'ing them each year in Court as required by the Act should be borne by the Mutawallis from the income of the wakf and not by the Wakf Administration Fund. The question raised for the consideration of the R.L.A. is whether the view of the Chief Judge of the Small Causes Court, Bombay is correct.

2. Section 6-I and 6-K of the Mussalman Wakf Act, 1923x provides a source for the charges and expenses incidental to the registration, superintendence, administration and control of wakfs, the maintenance of the register of wakfs, the scrutiny and audith of accounts of wakf wakfs etc. The source provided is the Wakf Administration

Wakf Administration Fund. Section 7 on the other hand provides that every Mutawalli may pay from the income of the wakf property any expenses incurred by him in respect of the audit of the annual accounts. Regarding the audit of account there appears to be some discrepancy between the section 6-I, 6-K and 7. The Chief Judge seeks to harmonise the section by taking the scrutiny and audit of section 6-I and 6-K to be a special scrutiny and audit ordered by the Court in a particular instance under section 6-P. This appears to be an arbitrary interpretation. Its justification seems to be only the apparent discrepancy above mentioned and the Chief Judge's own opinion as to the proper source of payment . There is nothing in the wording or context of sections 6-I and 6-K suggest that the word 'audit' therein used means a special audit. The High Court has apparently harmonised the sections by taking them to mean that a Mutawalli can meet the audit expenses from either the Administration Fund or the income of the property. Such an interpretation seems to be strictly in accordance with the language of the sections. It may be noted that the Chief Judge merely says that the interpretation is debatable. It does not seem advisable in the circumstances to ask the High Court to withdraw their circular. If the intention of Government is that the audit expenses should be not from the income of the wakf property, the Act may be amended the make that clear.

Sd/-P.N.M.
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Remembrancer of Legal Affairs.

U.R. to R.D.N$_{o}$ .276 Confl dated the 3rd July 1942.

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Office of the R.L.A.

The view expressed by the District Judge, Thana, in his letter at page 1 ante regarding the constitution of only one Wakf Committee for all the three districts of Thana, Kolaba and Bombay Subburban District is correct. It is presumed that the district constituted under section 3 of the Bombay Civil Court Act, 1869 comprises Thana, Kolaba and Bombay Suburban District although no notification to that effect has been traced.

Sd/-P.H.M.
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Remembrancer of Legal Affairs.

U.R. to R.D., No. 7858, dated 28th September, 1942.

M.R.D.
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Office of the R.L.A.

The District Judge, Kanara, states that there are 14 wakfs in the district, none having an income exceeding Rs. 200. Consequently under rule 18 of the Bombay Mussalman Wakf Rules, 1936 all wakfs are exempt from making a contribution to the Wakf Administration Fund. Till 31st March 1942 there was thus no Administration Fund in Kanara District. A list of wakfs was notified each year in the Bombay Government Gazette but there was no publication in a newspaper although that is required by section 6-Q of the Mussalman Wakf Act, 1923. In April 1942 a fee of Rs. 5 was levied on an application to the court under section 6-C and this payment has brought into being a Wakf Administration Fund. On these facts the question for the R.L.A.'s consideration is whether it is obligatory upon the court to publish in a newspaper a list of wakfs under section 6-Q and a statement of the sums standing to the credit of the Wakf Administration Fund. Although the fund is not sufficient or bear the charges of publication

2. Section 6-Q of the Mussalman Wakf Act is as follows:/-

> "6-Q. There shall be published annually on such date as the Local Government may determine in the Local official Gazette and in the principal vernacular of the district in a newspaper circulating there in a A list of wakfs and a statement of the sums standing to the credit of the Wakf Adminstration Fund, under the signature of the court and in such form as the Local Government may prescribe."

There is thus a statutory obligation to publish not only the account of the Wakf Administration Fund but also a list of wakfs. The publication of the list of wakfs in presumably important no matter whether there be an Administration Fund or not or whether its amount be negligible. It is true that there is not enough money in the Fund to pay for publication. But it cannot be said that the requirements of section 6-Q have become impossible. The court's inability is not the inability that is referred to in the maxim "Lex no cogit ad impossibilia." Government may amend the rule as regards contributio by the wakfs or it may itself make a contribution under section 6-J of the Act. In the circumstances there is no legal exemption from publication in the newspaper. That is the Legal poition, although no one is likely to suffer in justice or offer objection if publication in a newspaper is dispensed with.

Sd/-P.N.M.
23-12

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Remembrancer of Legal Affirs.

U.R. to R.D., No, 10249 dated the 24th December 1942.

M.R.D.
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